

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Adip Vora	Team: Squad #01	CCRB Case #: 202100465	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 01/21/2021 4:40 PM	Location of Incident: 28 West 125th Street	18 Mo. SOL 7/21/2022	Precinct: 28		
Date/Time CV Reported Thu, 01/21/2021 7:03 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Thu, 01/21/2021 7:03 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Damian Weber	25697	967387	028 PCT
2. POM Geraldo Rodriguez	18601	964249	028 PCT
3. POF Tania Martinez	22628	968614	028 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. PO Marcelo Espinoza	20073	962388	028 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Damian Weber	Abuse: Police Officer Damian Weber stopped § 87(2)(b)	
B.POM Damian Weber	Abuse: Police Officer Damian Weber drew his gun.	
C.POM Damian Weber	Force: Police Officer Damian Weber pointed his gun at § 87(2)(b)	
D.POM Damian Weber	Force: Police Officer Damian Weber used physical force against § 87(2)(b)	
E.POM Geraldo Rodriguez	Abuse: Police Officer Geraldo Rodriguez refused to provide his name to § 87(2)(b)	
F.POF Tania Martinez	Abuse: Police Officer Tania Martinez refused to provide her name to § 87(2)(b)	
G.POM Geraldo Rodriguez	Abuse: Police Officer Geraldo Rodriguez refused to provide his shield number to § 87(2)(b)	
H.POF Tania Martinez	Abuse: Police Officer Tania Martinez refused to provide her shield number to § 87(2)(b)	
I.POM Geraldo Rodriguez	Abuse: Police Officer Geraldo Rodriguez failed to provide § 87(2)(b) with a business card.	
J.POF Tania Martinez	Abuse: Police Officer Tania Martinez failed to provide § 87(2)(b) with a business card.	
§ 87(2)(g), § 87(4-b)		

Case Summary

On January 21, 2021, § 87(2)(b) filed this complaint via the online website.

On January 21, 2021, at approximately 4:40 PM, § 87(2)(b) exited her parked vehicle in front of 28 West 125th Street in Manhattan when Police Officer Damian Weber, of the 28th Precinct, stopped her, drew his gun, and pointed it at her (**Allegation A: Abuse of Authority** – § 87(2)(g)). PO Weber pushed § 87(2)(b) (**Allegation B: Abuse of Authority** – § 87(2)(g)) and **Allegation C: Force** – § 87(2)(g)). PO Weber pushed § 87(2)(b) (**Allegation D: Force** – § 87(2)(g)). Police Officer Geraldo Rodriguez and Police Officer Tania Martinez, both of the 28th Precinct, refused to provide their names, shield numbers, or business cards upon request (**Allegations E-J: Abuse of Authority** – § 87(2)(g)). § 87(2)(b) was not arrested, nor did she receive a summons as a result of this incident.

Body-worn camera (BWC) footage was received from PO Weber, PO Martinez, PO Rodriguez, and Police Officer Marcelo Espinoza (**Board Reviews 01-04**). § 87(2)(g), § 87(4-b)

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Damian Weber stopped § 87(2)(b). § 87(2)(b) testified that she was sitting in her burgundy Ford Explorer, NYS Plate § 87(2)(b) that was legally parked outside of 28 West 125th Street in Manhattan for about 20 minutes watching videos on her cell phone when she observed a police vehicle drive down the street in the opposite direction and make a U-turn (**Board Review 05**). About five minutes later, she exited her vehicle and stood directly outside of her driver's side door, with her hands outside of her pockets. Immediately, she heard PO Weber say, "red truck," and then approach her on foot. While approaching, he told her not to move and put her hands up. PO Weber told her that her plates were coming up stolen. She responded that it was not possible since she had owned the vehicle for three years and had interactions with officers where they looked up her plates. He handcuffed her, then returned to his vehicle. PO Espinoza stood behind § 87(2)(b) vehicle while holding his phone. About five to eight minutes later, PO Espinoza walked over to PO Weber and said, "oh shit, it's not stolen." PO Weber walked back to § 87(2)(b) told her that her vehicle was no longer coming up as stolen, and removed her handcuffs.

PO Weber testified that he was driving a marked SUV with PO Espinoza when the license plate reader (LPR) alerted him that a nearby vehicle was stolen (**Board Review 06**). The LPR automatically scanned § 87(2)(b) plate while the officers' vehicle was moving and displayed a picture of the license plate, a picture of the vehicle, and information that the vehicle was stolen out of state. PO Weber saw § 87(2)(b) exit her vehicle and recognized her vehicle from the picture generated by the LPR of the vehicle that it scanned. Based on this, he decided to stop § 87(2)(b). PO Weber did not observe § 87(2)(b) commit any violations. PO Weber approached § 87(2)(b) on foot and told her to stop and turn around, and § 87(2)(b) complied. He handcuffed § 87(2)(b) then ran her license plate number in an NYPD license plate system, which revealed that neither the plate nor the vehicle was listed as stolen. He did not know why the LPR initially generated an incorrect alert on § 87(2)(b) vehicle. PO Weber then removed § 87(2)(b) handcuffs.

PO Weber recorded an entry in his memo book at 16:43 on January 21, 2021, that shows an image of the LPR readout from the incident, and reads, "§ 87(2)(b) "KY," and "Stolen Out of State" (**Board Review 09**).

PO Espinoza testified that § 87(2)(b) vehicle was legally parked and had no apparent mechanical problems when they approached her, and that PO Weber made the decision to stop her (**Board Reviews 07-08**). PO Espinoza stated that the LPR system could not differentiate between

identically numbered plates from different states. PO Espinoza remained in the car for the first few seconds of the interaction, while PO Weber, PO Martinez, and PO Rodriguez approached § 87(2)(b) as he was confirming whether § 87(2)(b) car was stolen. PO Espinoza stated that officers investigate to see if the car comes up stolen by checking the license plate number and registration in an online system. PO Espinoza did not run a check on § 87(2)(b) plates prior to stopping § 87(2)(b). PO Espinoza was questioned about the LPR readout from PO Weber's memo book and stated that "§ 87(2)(b) indicated which part of the plate was a match, "KY" indicated that the stolen vehicle had a Kentucky plate, and "Stolen Out of State" indicated that the vehicle was either a stolen vehicle from a state other than New York, or a New York vehicle that was stolen in a state other than New York.

PO Rodriguez's BWC footage from 00:00 to 00:45 of the video player's timestamp captures PO Rodriguez and PO Martinez arriving to the scene after PO Weber and PO Espinoza, then walking up to PO Weber's vehicle and standing with PO Weber outside of his vehicle (**Board Review 03**). There is no audio during that time. PO Rodriguez's vehicle is parked directly behind PO Weber's, which is about two car lengths behind § 87(2)(b) vehicle. At 00:42 the driver's side door of § 87(2)(b) vehicle opens, and PO Espinoza, who is in the driver's seat of the police vehicle, drives his vehicle forward up to about one car length behind § 87(2)(b) vehicle while PO Rodriguez, PO Martinez, and PO Weber move forward a few feet towards § 87(2)(b) remaining side-by-side with PO Espinoza's vehicle. By 00:52, § 87(2)(b) has completely exited the vehicle, closed her door, and is facing her vehicle. § 87(2)(b) has not had any interaction with an officer at this point. At 00:54, PO Weber says something to § 87(2)(b) (inaudible as audio does not begin until 00:59) and approaches her. PO Rodriguez and PO Martinez approach § 87(2)(b) alongside PO Weber. PO Weber reaches § 87(2)(b) first and handcuffs her at 01:09.

PO Weber's BWC footage from 00:01 to 00:40 of the video player's timestamp captures PO Weber approach and handcuff § 87(2)(b) (**Board Review 01**). Audio begins at 00:59. At 01:03, PO Weber explains to § 87(2)(b) that her plate popped up as stolen in their car system, and that they are going to run the plate now. The BWC's timestamp shows that PO Weber begins approaching § 87(2)(b) at 16:32:54.

PO Espinoza's BWC footage from 00:00 to 00:30 of the video player's timestamp captures PO Espinoza in his vehicle attempting to interact with the LPR system (**Board Review 04**). At 00:32, PO Espinoza taps a button on the LPR, then exits the vehicle with his phone. At 00:48, the BWC captures the other three officers at § 87(2)(b) vehicle, and PO Weber walks towards PO Espinoza. At 00:50, PO Espinoza opens an app that reads "Vehicle." At 00:52, § 87(2)(b) is visible in handcuffs.

A warrant audit of § 87(2)(b) and her license plate shows that only two checks of § 87(2)(b) plate were conducted, both by PO Espinoza. He conducted a search at 16:34:08, opened a related report at 16:36:39 and then then conducted a second search at 16:39:30 (**Board Review 11**).

A Stop Report prepared by PO Weber states that they observed § 87(2)(b) for two minutes prior to her stop and the only factor that led to § 87(2)(b) stop was the license plate reader (**Board Review 12**).

Patrol Guide Procedure 219-31 states that the LPR is not automatically connected to the New York State Police Information Network (NYSPIN), is programmed to scan the state of registration and will activate upon a partial scan match; therefore, it is absolutely essential that the LPR operator verify the current status of a vehicle through NYSPIN prior to initiating any law enforcement action, unless there are additional reasons for a lawful stop or if circumstances provide sufficient

reasonable suspicion to justify a Terry Stop (**Board Review 10**).

The LPR alerted PO Weber and PO Espinoza to § 87(2)(b) vehicle based on a match of only the plate numbers (not the letters) against a plate from a different state. Officer testimony, BWC footage, and a warrant audit all confirmed that PO Weber did not verify the status of § 87(2)(b) vehicle prior to initiating law enforcement activity. Furthermore, while PO Espinoza did attempt to interact with the LPR, per Patrol Guide Procedure 219-31 and PO Espinoza's testimony, the LPR is not connected to NYSPIN, and so the requisite search cannot be conducted on the LPR. As such, the investigation credits that PO Espinoza did not conduct a search to verify the status of § 87(2)(b) vehicle prior to PO Weber initiating law enforcement activity. Given that PO Weber testified that he did not observe her commit any violations, and that his verbal testimony, memo book, and Stop Report all state that he stopped her based on the LPR readout, the investigation determined by a preponderance of the evidence that there were no additional reasons for the stop. As PO Weber stopped § 87(2)(b) based solely on a partial plate match that neither he nor PO Espinoza verified prior to initiating law enforcement action, § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

Allegation (B) Abuse of Authority: Police Officer Damian Weber drew his gun.

Allegation (C) Force: Police Officer Damian Weber pointed his gun at § 87(2)(b)

§ 87(2)(b) testified that PO Weber drew his weapon and pointed it at her when he approached her (**Board Review 05**).

PO Weber testified that he drew his weapon and pointed it at the ground after he exited his vehicle, (**Board Review 06**). He had suspicion that a felony (stolen vehicle) had been committed, due to the LPR alert, and because he was unsure what § 87(2)(b) might do, and was concerned for his safety and that of those around him, he drew his weapon. He stated that he had no other reason for drawing his weapon. PO Weber stated that the LPR system provided only vehicle information and did not provide descriptions of subjects. He holstered his weapon prior to handcuffing § 87(2)(b)

PO Weber's memo book and the Stop Report that he prepared noted that PO Weber drew his firearm in regard to the felony stop for the LPR alert for a stolen plate/vehicle (**Board Reviews 09 and 12**).

PO Weber's BWC footage at 00:01 of the video player's timestamp and 16:32:55 of the BWC timestamp captures PO Weber beginning to approach § 87(2)(b) (**Board Review 01**). From 00:01 to 00:10 of the video player's timestamp, PO Weber holds his weapon in front of him, pointed to the ground, while he approaches § 87(2)(b). From 00:17 to 00:19, both of PO Weber's hands are visible as he handcuffs § 87(2)(b). Neither hand is holding a gun. The BWC footage captures PO Weber's entire approach. PO Weber did not point his gun at § 87(2)(b) at any point.

Patrol Guide Procedure 221-01 states that drawing a firearm prematurely or unnecessarily limits an officer's options in controlling the situation and that the decision to draw a firearm should be based on an articulable belief that the potential for serious physical injury is present (**Board Review 18**).

Per People v. Finlayson, 76 A.D.2d 670, an officer may take appropriate self-protective measures when he lawfully confronts an individual and reasonably believes him to be armed or otherwise dangerous to the officer or others. Drawing a weapon would be deemed a permissible act of self-protection provided only that it was reasonably related to specific and articulable facts from which it was reasonable to infer that the suspect was armed and dangerous (**Board Review 13**).

It is undisputed that PO Weber drew his gun. Per his testimony, PO Weber drew his gun based upon his suspicion that a felony vehicle theft had occurred and a resultant concern for his and others' safety, all of which was predicated on an unverified LPR alert. Further, PO Weber could not articulate any specific facts that led him to believe that § 87(2)(b) was armed, other than the results of the LPR, which did not describe a suspect or indicate whether the theft was violent. § 87(2)(g) PO Weber drew his weapon solely based on a LPR alert that did not indicate that the individual was armed and had no other articulable facts from which it would be reasonable to infer that § 87(2)(b) was armed and dangerous, § 87(2)(g)

BWC footage that captured the entirety of the time that PO Weber had his weapon out did not show PO Weber point his gun at § 87(2)(b) § 87(2)(g)

Allegation (D) Force: Police Officer Damian Weber used physical force against § 87(2)(b)
§ 87(2)(b) testified that PO Weber pushed her against her vehicle when he handcuffed her (**Board Review 05**).

PO Weber's BWC footage from 00:17 to 00:43 of the video player's running time captures PO Weber handcuffing § 87(2)(b) (**Board Review 01**). The footage captures PO Weber's entire interaction with § 87(2)(b) while he handcuffs her. PO Weber does not push § 87(2)(b) against her vehicle at any point.

Because BWC footage captured the entirety of PO Weber and § 87(2)(b) interaction while PO Weber handcuffed § 87(2)(b) and did not show PO Weber push her, § 87(2)(g)

Allegation (E) Abuse of Authority: Police Officer Geraldo Rodriguez refused to provide his name to § 87(2)(b)

Allegation (F) Abuse of Authority: Police Officer Tania Martinez refused to provide her name to § 87(2)(b)

Allegation (G) Abuse of Authority: Police Officer Geraldo Rodriguez refused to provide his shield number to § 87(2)(b)

Allegation (H) Abuse of Authority: Police Officer Tania Martinez refused to provide her shield number to § 87(2)(b)

Allegation (I) Abuse of Authority: Police Officer Geraldo Rodriguez failed to provide § 87(2)(b) with a business card.

Allegation (J) Abuse of Authority: Police Officer Tania Martinez failed to provide § 87(2)(b) with a business card.

§ 87(2)(b) testified that, after her handcuffs were removed, she asked every officer present for their names, badge numbers or cards (**Board Review 05**). PO Weber told her he would get a business card and returned to his vehicle while PO Rodriguez and PO Martinez walked away. PO Weber returned and gave her a business card with both his and PO Espinoza's information on it. § 87(2)(b) asked about PO Rodriguez's and PO Martinez's information, and PO Weber ignored her and walked away.

PO Martinez's BWC footage from 05:18 to 06:37 of the video player's running time captures the time from when § 87(2)(b) is removed from handcuffs to when PO Martinez and PO Rodriguez walk away (**Board Review 02**). At no point did § 87(2)(b) ask for PO Martinez's or PO Rodriguez's names, badge numbers, or business cards.

PO Weber's BWC footage from 08:13 to 09:16 of the video player's timestamp captures § 87(2)(b) telling PO Weber that she "want[s] badge numbers" after PO Martinez and PO Rodriguez have already walked away and PO Weber provides § 87(2)(b) with a business card with his and PO Espinoza's information on it (**Board Review 01**). At no point does § 87(2)(b) ask specifically for PO Martinez's or PO Rodriguez's badge numbers, or business cards.

BWC footage that captured the entirety of § 87(2)(b) interaction with PO Martinez and PO Rodriguez did not show § 87(2)(b) asking for badge numbers or business cards from either officer. § 87(2)(g)

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**Board Review 14**).
- PO Weber has been a member of service for three years and is a subject in two other CCRB complaints and four other allegations. Both complaints are ongoing. § 87(2)(g)
- PO Espinoza has been a member of service for five years and has been a subject in two other CCRB complaints and six other allegations, none of which were substantiated. § 87(2)(g)
 - § 87(2)(g)
- PO Rodriguez has been a member of service for four years and has been a subject in two other CCRB complaints and four other allegations, none of which were substantiated. § 87(2)(g)
 - 202102908 is an ongoing CCRB investigation.
- PO Martinez has been a member of service for two years and has been a subject in one other CCRB complaint and one other allegation, which was not substantiated. § 87(2)(g)

Mediation, Civil, and Criminal Histories

- Mediation was offered for this case; however, § 87(2)(b) did not respond to follow-up contact attempts regarding her decision.
- As of February 4, 2022, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards this to complaint (**Board Review 15**).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad: _____ 1 _____

Investigator: _____ Inv. Adip Vora _____ Inv. Adip Vora _____ 04/20/2022

	Signature	Print Title & Name	Date
Squad Leader:	<u>Mgr. Joy Almeyda</u> Signature	<u></u> Print Title & Name	<u>4.20.22</u> Date
Reviewer:	<u></u> Signature	<u></u> Print Title & Name	<u></u> Date